

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CATERPILLAR FINANCIAL SERVICES
CORPORATION,

Plaintiff,

v.

2008 70' QUEENSHIP RPH Serial No. A129, its
Engines, Machinery, Appurtenances, etc.,
In Rem,

Defendant.

IN ADMIRALTY

Case No. 2:11-cv-00791-RSL

**FIRST AMENDED COMPLAINT
TO FORECLOSURE MARINE
SECURITY AGREEMENT
*IN REM***

Plaintiff Caterpillar Financial Services Corporation ("Caterpillar") alleges:

I.

This is a matter of admiralty and maritime jurisdiction under 46 U.S.C. § 31322 and § 31325 and within the meaning of Rule 9(h).

II.

At all times material herein, defendant 2008 70' QUEENSHIP RPH Serial No. A129 (the "Vessel"), its engines, machinery, appurtenances, etc. was owned by WorldSpan Marine Inc. ("Owner"). The Vessel is now at 2288 West Commodore Way, Seattle, Washington, or will be during the pendency of process herein, within this district and within the jurisdiction of this Court.

**FIRST AMENDED COMPLAINT TO FORECLOSE MARINE
SECURITY AGREEMENT - 1**

HOLMES WEDDLE & BARCOTT, PC
999 THIRD AVENUE, SUITE 2600
SEATTLE, WA 98104-4011
TELEPHONE (206) 292-8008
FAX (206) 340-0289

1. **III.**

2. That on or about October 23, 2007, Owner executed and delivered to Caterpillar,
3. for valuable consideration, a Loan Agreement ("Loan Agreement") in the principal sum
4. of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00). Loan
5. Agreement, attached hereto as Exhibit 1. A Builder's Mortgage and Marine Security
6. Agreement on the Vessel secure the Loan Agreement.

7. **IV.**

8. That on or about October 23, 2007, Owner granted a Marine Security Agreement
9. ("Agreement") for One Million Five Hundred Thousand and No/100 Dollars
10. (\$1,500,000.00) to Caterpillar. Marine Security Agreement, attached hereto as Exhibit 2.

11. **V.**

12. That on or around October 23, 2007, Owner executed and delivered to Caterpillar,
13. for valuable consideration, a Builder's Mortgage ("Builder's Mortgage") to secure the
14. Loan Agreement. Builder's Mortgage, attached hereto as Exhibit 3. Said Builder's
15. Mortgage was duly recorded at the Record Of Ships, and in all respects qualified as a
16. Preferred Mortgage under 46 U.S.C. § 31301 *et seq*, including § 31325.

17. **VI.**

18. That on or around April, 2008, Owner executed and delivered to Caterpillar, for
19. valuable consideration, a Floorplan Note referred to in the previously described Loan
20. Agreement and incorporated the terms of the Loan Agreement ("Floorplan Note")
21. amending the terms of the Loan Agreement. Floorplan Note, attached hereto as Exhibit
22. 4. The Marine Security Agreement and the Builder's Mortgage on the Vessel secures the
23. Floorplan Note.

1. **VII.**

2. That on or around August 26, 2010, Owner executed and delivered to Caterpillar,
3. for valuable consideration, a Rescheduling Agreement And Amendment To Master Loan
4. Agreement amending the Loan Agreement and other loan documents, Mortgage, and
5. amendments. Rescheduling Agreement And Amendment To Master Loan Agreement
6. attached hereto as Exhibit 5.

7. **VIII**

8. Caterpillar is the owner and holder of the Loan Agreement, Marine Security
9. Agreement, Builder's Mortgage, Floorplan Note, Rescheduling Agreement, and the
10. amendments thereto on the Vessel.

11. **IX.**

12. There is now a default under the terms of the Loan Agreement, Marine Security
13. Agreement, Builder's Mortgage, Floorplan Note, and Rescheduling Agreement. There is
14. now due and owing to Caterpillar under the Loan Agreement, Marine Security
15. Agreement, Builder's Mortgage, Floorplan Note, Rescheduling Agreement,
16. \$1,438,481.03, subject to adjustment together with the principal and accruing interest at
17. \$72.21 per day from May16, 2011, plus costs and attorneys' fees.

18. That the laws of the United States provide that, upon a default of any term of a
19. preferred mortgage, the mortgage holder may enforce its claim for outstanding
20. indebtedness against the mortgaged vessel, *in rem*, 46 U.S.C. § 31325.

21. **WHEREFORE**, plaintiff Caterpillar prays for judgment as follows:

22. 1. That this Court decree payment due by the Vessel on the Loan Agreement,
23. Marine Security Agreement, Builder's Mortgage, Floorplan Note, Rescheduling
24. Agreement, for the following:

1. a. The sum of \$1,438,481.03, subject to adjustment together with the
2. principal accruing interest at \$72.21 per day from May 16, 2011;

3. b. Reasonable attorneys' fees as provided in the mortgage and the
4. guaranties; and

5. c. The costs of this action including charges for all fees for keepers
6. and their costs incurred in this action and for all expenses for the sale of the Vessel, her
7. engines, machinery, and appurtenances, etc.

8. 2. That Caterpillar be adjudged the holder of a first marine mortgage on the
9. Vessel for the payment of sums due, including costs and attorneys' fees, and that this
10. Court declare the lien of the said Mortgage to be superior to all other liens which may
11. exist against the Vessel.

12. 3. That the mortgage be foreclosed and the Vessel be sold by the U.S.
13. Marshal and the proceeds of the sale be applied and delivered to pay demands and claims
14. of Caterpillar in the amount and to the extent as specifically set forth herein, together with
15. costs and attorneys' fees, and that it be declared that any and all persons, firms or
16. corporations claiming any interest in the Vessel are forever barred and foreclosed of and
17. from all rights of equity or redemption or claim in and to the Vessel.

18. 4. That *in rem* process in due form of the law issue against the Vessel.

19. 5. That at the sale of the Vessel by the U.S. Marshal, Caterpillar be permitted
20. to bid, without cash deposit, its judgment, accrued interest, costs and attorneys' fees, up
21. to the full amount thereof.

22. 6. That Caterpillar have such other and further relief as in law and equity it
23. may be entitled to receive.

1. DATED this 10th day of May, 2011.

2. HOLMES WEDDLE & BARCOTT

3.
4. s/ William D. De Voe
5. William D. De Voe, WSBA # 17454
6. Attorneys for Plaintiff
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2. VERIFICATION

3. UNITED STATES OF AMERICA)
4. STATE OF TENNESSEE) ss.

5. Shelli Barnes, being first duly sworn, upon oath deposes and states upon
6. information and belief:

7. I hold the position of Customer Services Representative of Caterpillar Financial
8. Services Corporation. I am familiar with the Loan Agreement, Rescheduling Agreement,
9. Floorplan Note, Builder's Mortgage, and Marine Security Agreement referred to in the
10. foregoing complaint. I have read the above and foregoing Complaint, know the contents
11. thereof, and I declare under penalty of perjury under the laws of the United States of
12. America that the foregoing is true and correct, and execute this verification on behalf of
13. plaintiff after being authorized to do so.
14.

15. Shelli Barnes
16. Shelli Barnes

17. SUBSCRIBED AND SWORN to before me this 10th day of May, 2011.
18.

19. Kevin R. Weigand
20. Print Name: Kevin R. Weigand
21. Notary Public in and for the State of Tennessee
22. Residing at: Nashville, TN
23. My Commission Expires: _____

